

IN RE: PETITION FOR SPECIAL HEARING
36/S Cove Road, 208 ft. NE
of c/l North Point Blvd.
3838 North Point Boulevard
15th Election District
7th Councilmanic District
New North Point Company, Inc.
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 92-417-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case comes before the Zoning Commissioner as a Petition for Special Hearing, seeking approval of the existing placement of storage containers on the subject property known as 3838 North Point Boulevard. Specifically, the Petitioner seeks permission to continue use of the M.L. portion of the subject property to house storage containers, as shown on Petitioner's Exhibit No. 1, the site plan to accompany the Petition for Special Hearing.

The Petitioner/property owner, William Meyers, appeared at the hearing and was represented by Francis X. Borgerding, Jr., Esquire. Also appearing was Oscar Meyers and Nick Commodari, who prepared Petitioner's exhibit No. 1, the plat to accompany the Petition. There were no Protestants present.

Testimony and evidence submitted at the hearing disclosed that the subject property is 3.23 acres in area and is located in the North Point section of Baltimore County. To the west, the property is bordered by Cove Road and a ramp which leads therefrom onto Patapsco Freeway, which runs along the north side of the property. To the south, the property is bounded by North Point Boulevard. To the east, other commercial uses and some residences exist. As indicated, the property is approximately 3.23

acres and is split zoned. A portion, which contains a liquor store building and metal fabrication shop, is zoned B.R.-I.M. This B.R. portion includes the southern part of the tract. The northern part of the tract is zoned M.L.-I.M. and features a print shop building and subject containers.

Although the above description was gleaned from the testimony and evidence submitted at the hearing, a comment is in order about the sufficiency of Petitioner's Exhibit No. 1, the site plan. Clearly the plan is not in compliance with the requirements of the B.C.Z.R. as they relate to information which need be supplied when a Petition for Special Hearing is filed. As is noted in the Zoning Advisory comments from the Office of Planning and Zoning, an understanding of the activity on site is difficult due to "the absence of pertinent information on the site plan." Further, Rahee J. Famili, the Traffic Engineer who reviewed the plan notes that the "submitted plan is not legible for review." Lastly, as was acknowledged by the Petitioner, the plan incorrectly shows the number of existing containers for which the Petitioner seeks approval on site. That is, on the site plan, 10 containers are shown, whereas the Petitioner testified that 7 are actually located on the property. Notwithstanding this information, sufficient facts were presented to enable me to rule on the Petition.

As to the testimony presented, it was proffered that the property has an extensive zoning history and litigation is currently pending before the Honorable James T. Smith, Jr., in the Circuit Court of Maryland for Baltimore County. This case arises from the Petitioner's alleged contempt of an earlier ruling by the Court. Apparently, it is alleged that a junk yard operation exists on the site in violation of the Court's prior Order.

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Further, Mr. Meyers testified and described the property. As indicated, he stated that the property features a liquor store and metal fabrication building on the southern portion thereof fronting North Point Boulevard. The metal fabrication shop is used for the manufacture of metal products including racks and vehicle parts. Further, the Petitioner has caused 7 existing storage containers to be placed on site. These containers are described as 40 ft. long, 8 ft. wide and 7-1/2 ft. high. The Petitioner described the subject containers as being identical to those units which are mounted on the back of truck chassis for transporting goods by tractor trailer. However, the subject containers have apparently been in their present location for some time and are not mobile.

Also testifying was Nick Commodari who prepared the plat for special hearing. Mr. Commodari presented the Petitioner's arguments as to why the containers should be permitted on site as of right. In his view, the subject property is used for metal products manufacture and processing, a permitted use as of right, pursuant to Section 253.1.A.30 of the B.C.Z.R. Since the containers are used incidentally to that use, Mr. Commodari believes that they should be permitted as a matter of right in this case.

In opposition to that viewpoint, Mr. Commodari acknowledged the position of the Zoning staff as it relates to the placement of these types of containers in an M.R. zone. That position is based upon the definitional section of the B.C.Z.R. contained in Section 101 thereof. Specifically, the definition of a trucking facility as promulgated by Bill No. 18-76 is noted. Within that definition, it is provided that "the term 'trucking facilities' includes facilities for the storage of freight shipping containers designed to be mounted on chassis for part or all of their trans-

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port, but does not include a warehouse, moving and storage establishment or truck stop."

In considering the issues before me, I am obliged to follow that rule of law which provides that a statute shall be construed in accordance with the plain meaning of the words used therein. Simply stated, if the terms and meanings of the statute are clear on its face, there is no interpretation necessary. See Falcone v. Palmer Ford, Inc., 219 A2d 808, 742 Md. 487 (1966) State v. Fabritz, 348 A2d 275, 276 Md. 416 (1975). In the subject case, I find the meaning of the language used within the definition of trucking facility as stated in Section 101 to be clear and unambiguous. That definition clearly addresses and identifies the use of the subject freight shipping containers before me. In fact, what the Petitioner seeks is permission to locate on site a freight shipping container which is designed to be mounted on the chassis of a truck. Therefore, the intent of the B.C.Z.R. is clear, such a use constitutes a trucking facility, which may only be used in an M.L. zone by special exception. Although, I am appreciative of the Petitioner's combination of use/incidental use approach, that argument is relevant only when the statute is unclear and the subject use is not expressly defined within the regulations. In this case, since the use is so clearly defined, an interpretation of the statute is not necessary. Further, even if a combination of use approach was adopted, serious reservations would result in that the metal fabrication shop is situated within the B.R. zoned portion of the property, while the containers are located on the M.L. portion of the property.

For the foregoing reasons and pursuant to the public hearing held, the Petition for Special Hearing will, therefore, be denied.

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Pursuant to the advertising, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 24th day of June, 1992, that the Petition for Special Hearing seeking approval of the placement of existing storage containers on the subject property known as 3838 North Point Boulevard; and seeking permission to continue the use of the M.L. portion of the subject property to house storage containers, in accordance with Petitioner's Exhibit No. 1, be and is hereby DENIED.

LES:mmm

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

Suite 117 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

June 23, 1992

Francis X. Borgerding, Jr., Esquire
409 Washington Avenue
Suite 600
Towson, Maryland 21204

RE: Petition for Special Hearing
New North Point Company, Inc.
Case No. 92-417-SPH

Dear Mr. Borgerding:

Enclosed please find a copy of the decision rendered in the above captioned matter. The Petition for Special Hearing has been denied.

In the event any party finds the decision rendered unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Appeals Clerk at 887-3391.

Very truly yours,
LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:mmm
encl.
cc: Mr. William F. Meyers
Mr. Nick Commodari



Petition for Special Hearing
to the Zoning Commissioner of Baltimore County
for the property located at 3838 North Point Blvd.

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 502.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commission should approve the existing storage containers should be considered as a permitted use in the M.L. zone and therefore should be allowed to remain on the subject property as a matter of right.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Current Parcel Number:

(Type or Print Name)

Signature

Address

City

State

Zip

Telephone

Address

City

State

Zip

Telephone

Address

City

State

Zip

Telephone

Address

City

State

Zip

Telephone

Legal Owner(s)

(Type or Print Name)

Signature

Address

City

State

Zip

Telephone

Address

City

State

Zip

Telephone

Address

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State

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City

State

Zip

Telephone

DESCRIPTION FOR SPECIAL HEARING

Located on the southeast side of Cove Road approximately 208' northeast of North Point Boulevard and thence running along the southeast side of Cove Road N 37° 30' W 42' thence N 60° 41' 15" E 178.21' thence along the southerly right-of-way of Ramp D of the Patapsco Freeway 84.21' thence N 89° 18' 31" E 124.32' thence proceeding along the aforementioned southerly right-of-way 196.36' thence S 61° 15' 43" E 195' thence 529° 39' 17" W 50.51' thence N 14° 00' 00" W 280' thence 517° 05' W 100' N 53° 30' W 280' to the place of beginning. Containing 3.23 acres.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 15th Date of Posting 5/11/92

Posted for: Special Hearing

Petitioner: New North Point Company, Inc.

Location of property: 3838 North Point Blvd.

Location of signs: 3838 North Point Blvd.

Remarks: For info. see 92-417-SPH

Posted by: [Signature]

Date of return: 5/22/92

Number of Signs: 1

ORDER RECEIVED FOR FILING
Date 6/24/92
By [Signature]

- 5 -

NOTICE OF HEARING
The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 112, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:
Case Number: 92-417-SPH
3533 Cove Road, 203' NE of c/l North Point Boulevard
3533 Cove Road, 203' NE of c/l North Point Boulevard
203 North Point Boulevard
Public Hearing District - 7th Councilmanic
Petitioner(s): New North Point Company, Inc.
HEARING: WEDNESDAY, JUNE 3, 1992 at 11:00 a.m.
Special Hearing to approve the existing storage containers should be considered as a permitted use in the M.C. zone and therefore should be allowed to remain on the subject property as a matter of right.
Special Hearing to approve the existing storage containers should be considered as a permitted use in the M.C. zone and therefore should be allowed to remain on the subject property as a matter of right.
NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
5/19/92 May 19

CERTIFICATE OF PUBLICATION

TOWSON, MD., 5/14, 1992
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 5/14, 1992

THE JEFFERSONIAN,

S. Zake
Publisher

\$44.73

BALTIMORE COUNTY, MARYLAND
OFFICE OF ZONING ADMINISTRATION
MISCELLANEOUS CASH RECEIPT
DATE 4/24/92 ACCOUNT 01-615
92-417-SPH AMOUNT \$250.00
RECEIVED FROM George A. Borgerding
FOR Commercial Special Hearing
NEW NORTH POINT CO.
04A04H0029NICHRC \$250.00
SA C001247PH04-20-92
VALIDATION ON SIGNATURE OF CASHIER
DATE 5/19/92 BY W. CARL RICHARDS JR.

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Date 6/07/92 Account: R-001-6150
PUBLIC HEARING FEES QTY PRICE
040 -POSTING SIGNS / ADVERTISING 1 X \$79.73
TOTAL: \$79.73
LAST NAME OF OWNER: NEW NORTH POINT
Please Make Checks Payable To: Baltimore County
CASHIER VALIDATION

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

DATE 5-27-92

New North Point Company, Inc.
3533 Cove Road, 203' NE of c/l North Point Boulevard
Baltimore, Maryland 21222

RE:
CASE NUMBER: 92-417-SPH
3533 Cove Road, 203' NE of c/l North Point Boulevard
203 North Point Boulevard
Public Hearing District - 7th Councilmanic
Petitioner(s): New North Point Company, Inc.

Dear Petitioner(s):

Please be advised that \$ 79.73 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID. ALSO, THE ZONING SIGN & POST SIGN(S) MUST BE RETURNED ON THE DAY OF THE HEARING OR THE FEEER SHALL NOT BE REFUND. DO NOT REMOVE THE SIGN & POST SIGN(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please forward your check via return mail to the hearing office, County Office Building, 111 W. Chesapeake Avenue, Room 112, Towson, Maryland 21204. It should have your case number noted thereon and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper credit and/or your delivery, immediate attention to this matter is suggested.

Carl Jablon
ARNOLD JABLON
DIRECTOR

cc: Francis X. Borgerding, Jr., Esq.

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

MAY 5, 1992

NOTICE OF HEARING

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203 North Point Boulevard
Public Hearing District - 7th Councilmanic
Petitioner(s): New North Point Company, Inc.
HEARING: WEDNESDAY, JUNE 3, 1992 at 11:00 a.m.

Special Hearing to approve the existing storage containers should be considered as a permitted use in the M.C. zone and therefore should be allowed to remain on the subject property as a matter of right.

Lawrence E. Schmidt
Lawrence E. Schmidt

Zoning Commissioner of
Baltimore County

cc: New North Point Company, Inc.
Francis X. Borgerding, Jr.

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number

Date
PAID PER HAND-WRITTEN RECEIPT DATED 4/20/92
5/04/92

H9200437

PUBLIC HEARING FEES QTY PRICE
040 -SPECIAL HEARING (OTHER) 1 X \$250.00
TOTAL: \$250.00
LAST NAME OF OWNER: NEW NORTH POINT

Please Make Checks Payable To: Baltimore County

Cashier Validation

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

May 27, 1992

Francis X. Borgerding, Esquire
409 Washington Avenue, Suite #600
Towson, MD 21204

RE: Item No. 437, Case No. 92-417-SPH
Petitioner: New North Point Company
Petition for Special Hearing

Dear Mr. Borgerding:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

Your petition has been received and accepted for filing this
20th day of April, 1992.

Carl Jablon
ARNOLD JABLON
DIRECTOR

Received By:

W. Carl Richards Jr.
Chairman,
Zoning Plans Advisory Committee

Petitioner: New North Point Company, et al
Petitioner's Attorney: Francis X. Borgerding

BUREAU OF TRAFFIC ENGINEERING
DEPARTMENT OF PUBLIC WORKS
BALTIMORE COUNTY, MARYLAND

DATE: April 30, 1992

TO: Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management

FROM: Rahee J. Famili

SUBJECT: Z.A.C. Comments

Z.A.C. MEETING DATE: April 27, 1992

LEGAL OWNER: New North Point Company, Inc. 431

The submitted plan is not legible for review. It is assumed that the access is the 30 ft. Right-of-Way off North Point Road.

Rahee J. Famili
Rahee J. Famili
Traffic Engineer II

RJF/dm

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management

DATE: May 12, 1992

FROM: J. Lawrence Pilson

SUBJECT: Item # 437 - New North Point Company, Inc.
3533 North Point Boulevard -
ZAC Meeting 4-27-92

The above-referenced matter has been reviewed by the Department of Environmental Protection and Resource Management. Comments are as follows:

The Environmental Impact Review Division requests an extension for the review of the petition request for a special hearing for the New North Point Company, Inc. A Chesapeake Bay Critical Area Findings Plan is required for review and approval prior to completing a Findings Plan for this property. The petitioner should contact this office immediately at 887-2904 for a copy of the Critical Area Development regulations and the findings plan checklist.

If you have any questions, please contact me at extension 2762.

J. Lawrence Pilson
J. Lawrence Pilson, Development Coordinator
Department of Environmental Protection
and Resource Management

JLP:tj1

NORTHPT.ZON/TXTSPB

700 East Joppa Road, Suite 901
Towson, MD 21204-5500

(301) 887-4500

MAY 7, 1992

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: NEW NORTH POINT COMPANY, INC.

Location: #3838 NORTH POINT BOULEVARD

Item No.: (MJK) VIOLATION CASE Zoning Agenda: APRIL 27, 1992
427

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Noted and Approved
Fishing Group Fire Prevention Bureau
Special Inspection Division

JE/KEK

RECEIVED
MAY 11 1992
ZONING OFFICEBALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCETO: Arnold Jablon, Director DATE: May 4, 1992
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting
for May 4, 1992

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for the following items: (no item numbers assigned for five properties)

Item 430

K. Ledwell SE/S Old Hanover Road

J. Scheeler and D. Hall-Scheeler 2212 Maple Road

New North Point Company, Inc. 3838 North Point Road (431)

BBS Building Limited 1313 York Road

L. Heidrick #8 Kelbark Court

ROBERT W. BOWLING, P.E., Chief
Developers Engineering Division

RWB:DAR:s

BALTIMORE COUNTY, MARYLAND
OFFICE OF PLANNING AND ZONING
New Courts Bldg - 401 Bowley Avenue, Towson, MD 21204

MEMORANDUM

TO: Arnold Jablon, Director
Zoning Administration & Development Management

FROM: Office of Planning and Zoning

DATE: May 15, 1992

SUBJECT: New North Point Company, Inc.

INFORMATION: 431
Item Number:

Petitioner: William L. Meyers, Vice-President

Property Size: 3.23 acres

Zoning: ML-1M and BR-1M

Requested Action: Special Hearing

Hearing Date: / /

SUMMARY OF RECOMMENDATIONS:

The petitioner is requesting a Special Hearing to allow existing storage containers to remain on this property because the petitioner feels that this is a permitted use within the ML zone. It is very difficult to provide meaningful comments for this site due to the absence of pertinent information on the site plan. The petitioner should be required to submit a readable site plan that reflects existing conditions and as well as any proposed additions. The planning staff cannot comment unless it is clearly outlined exactly what is the principal use of the existing business, whether there is existing vegetation, on the site, location of access points, extent of paved areas, and show the location any fences that exist on the property. In short, the petitioners site plan is inadequate to allow staff to provide comments.

RECEIVED
MAY 19 1992

ZONING OFFICE

NPOINT/ZAC1

ZAC COMMENTS

The petitioner has stated also that the containers are allowed to be stored in the ML zone as a matter of right. However, the petitioner fails to indicate that 40 percent of the containers are being stored in the BR-1M zone which is not permitted as a matter of right. According to the B.C.Z.R., if freight-shipping containers are stored on site then the property is considered a trucking facility. The Office of Planning and Zoning opposes a trucking facility at this site. The site is currently used as a junk yard and the residents in the immediate area are concerned about the unsightliness of this property. Any development, redevelopment or determinations regarding non-conforming uses should require that the property be cleaned up and landscaping added in order to enhance this property.

In short, the Office of Planning and Zoning recommends DENIAL of the petitioners request based upon the poor site plan as well as lack of documentation stating the petitioners intent to improve or clean up the existing site. Attached for the Zoning Committee's review.

Prepared by:

Division Chief: Erwin M. Daniel

FM:rdn

NPOINT/ZAC1

Pg. 2

Department of Recreation and Parks
Development Review Committee Response Form
Authorized signature

Date 5/19/92

Project Name Waiver Number Zoning Issue Meeting Date

8100 Stevenson Road (Chizuk Amuno Congregation)

427

4-20-92

STP RP No Comments

7446 Berkshire Road 428

DEPRM RP (AT EIRD) No Comments

Oella Parcel A, Lots 34-38; Parcel B, Lots 40-45; Parcel C-1, Lots 49-57

Oella CRG 424

STP RP No Comments

9928 York Road (Taco Bell)

423

VIII-609 (921262) DEPRM RP (AT EIRD) No Comments

COUNT B

2212 Maple Road 4-27-92

DED DEPRM RP STP TE 425 No Comments

Magsamen Property (W/S Notchcliff Road)

DED DEPRM RP STP TE 436 No Comments

3838 North Point Boulevard

DED DEPRM RP STP TE 431 No Comments

14311 Old Hanover Road

DED DEPRM RP STP TE 433 No Comments

1243 Lanover Road

DED DEPRM RP STP TE 434 No Comments

1313-1315 York Road

DED DEPRM RP STP TE 438 No Comments

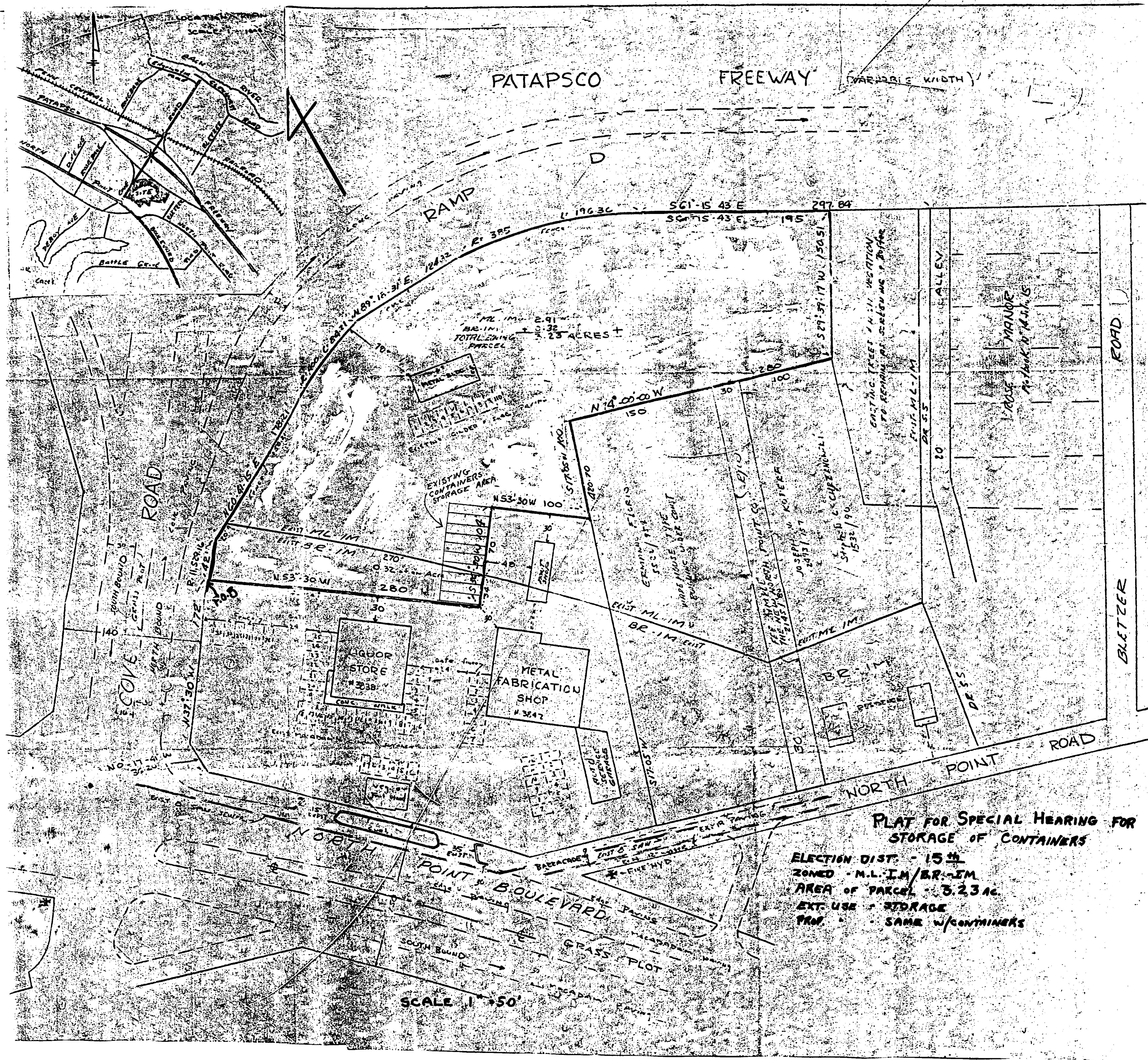
8 Kelbark Court

DED DEPRM RP STP TE 431 No Comments

1500 Glencoe Road - Oldfields School, Inc.

CR-92-399-XA

92-417-SPH



Plat No 1